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General Assembly

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Human Rights Council
Thirty-first session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by the American Association of Jurists, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Please recycle

Panel discussion on "Climate change and the right to health"

It is now well established that climate change has negative effects on human rights, especially the right to life, the right to food and the right to health.[1]. Many studies demonstrate the scale and nature of the effects on the world population and on the full enjoyment of human rights[2]. The right to health is one of the most important rights that is going to be, directly or indirectly, affected by the effects of the climate disruptions caused by climate change. Those facts have been largely recognized in many Human Rights Council (HRC) resolutions on human rights and climate change.

The right to health

The human right to health is legally recognized in many international human rights treaties[3], regional human rights conventions[4] and most of national legislations; it is comprehensively enshrined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) at its Article 12.1. The right to health is also further interpreted in General comment n°14 of the Committee on Economic Social and Cultural Rights (CESCR).

As interpreted by the CESCR, the right to health is "an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health". Furthermore, providing access to medicines is instrumental in achieving the full realization of the right to health. As a result, the right to health has many implications and is closely related to other human rights: highlighting the universality, indivisibility, interdependence and interrelation of all human rights, as stated by the Vienna Declaration and Programme of Action (1993).

The relationships between climate change and the right to health

A. The effects of climate change on human rights and on the States' ability to fulfil, protect and respect the right to health

Some expected direct effects of climate change, such as the land degradation, desertification, salinization of water sources in coastal areas due to the rise of the sea levels and the rise of temperatures, will induce shortages of drinking water and the loss of biodiversity, increase the exposure to ultraviolet radiation and the frequency of extreme weather events, like floods, heat waves, landslides and storms.

In another way, such consequences would also involve negative effects facilitated by the changes within the ecosystem. Climate change would probably be one of the most important causes of the spread of diseases, as some of the largest disease burdens are climate sensitive. Furthermore, the above-mentioned effects of climate change will reduce the yields of food, affect the food security and therefore the resilience of the food systems: this will lead to malnutrition and famine. The loss of biodiversity due to the disruptions of climate change will induce the depletion of natural medicines,

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[1] OHCHR, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*, Annual report of the United Nations Office of the High Commissioner for human rights on the relationship between climate change and human rights, A/HRC/10/61, January 2009.

[2] See among other : IPCC, *Climate Change 2014, Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change* [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)], Geneva, Switzerland, 2014, 151 pp.

[3] International Convention on the Elimination of All Forms of Racial Discrimination (1965) (ICERD), Article V (e)(iv); International Convention on the Elimination of Forms of Discriminations against Women (1979) (CEDAW), Article 11 (f) and 12 ; Convention on the Rights of the Child (1989) (CRC), Article 24

[4] European Social Charter of 1961 as revised (Article 11), the African Charter on Human and Peoples' Rights of 1981 (Article16) and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights of 1988 (Article 10).

affecting the communities of indigenous peoples depending on such cures. The effects of climate change will also imply mental stress and therefore affect mental health.

Finally, it is fundamental to alert on the indirect consequences that climate change will have on health, as climate change will produce more armed conflicts, displacement of population and massive migrations.

All those consequences will affect the ability of States to fulfil, protect and respect the right to health. In order to effectively face the consequences of climate change, States must make serious commitments within the framework of the 2015 Paris Agreement and adopt policies in line with protecting the right to health.

B. Some measures taken by States or by non-state actors impact the right to health and increase the effects of climate change

Scientific evidence show that, if climate change is a natural process, this phenomenon is accelerated by human activities, especially activities that are high emitters of greenhouse gas emissions and a system based on fossil energy and overconsumption.. Industrial activities are both triggers of climate change and a cause of non-communicable diseases, such as respiratory problems or obesity. The fact is that there is an urgent need to change the priorities and thinking in order to develop a new paradigm, in which corporate profit is not the rule. Human being should be at the centre of a system where biomedical R&D is needs-driven oriented and where policies are adopted for the well-being of humans. Those assertions seem to be self-evident: but they are not in practice. Today, it is fundamental to rethink the predominant model of development in order to address the adverse effects of climate change and take into account the effective health needs of the population.

It is also essential to ensure that the policies of non-state actors and private companies are based on human rights principles and are sustainable for the environment. The current process within the framework of the Human Rights Council on the negotiation of an internationally binding instrument on transnational corporations would be a great opportunity to reach this goal. Such initiative must be seen as complementary in relation to other kind of efforts, such as mitigating and adapting policies.

C. Some policies undertaken by States to mitigate or to adapt to the effects of climate change can affect the right to health

The fact that some policies undertaken by States to mitigate or to adapt to the effects of climate change can affect human rights is now well established. The development of biogas or biofuel is only one example of such policies that have a great impact on the full enjoyment of human rights. The former Special Rapporteur on the right to food, Olivier de Schutter, often denounced such method. Designed to find an alternative to fossil fuel, this method has finally revealed its insidious consequences: land grabbing, reduction of food production, deforestation and therefore limited positive outcomes on the way to mitigate the effects of climate change. Such measures have adverse consequences on the right to food, and therefore, also affect the right to health, generating malnourishment, displacement of populations that have to move to other less fertile places. Another effect is the reduction of water sources. The use of synthetic fertilizers combined with GMO induces pollution of the soil and affect health of the workers and of the consumers. This kind of measure shows to what extent it is difficult to design innovative and effective measures within the current paradigm.

Recommendations

States should:

- provide technology transfer and strengthen international cooperation in order to strengthen resilience of national health systems;
- design sustainable policies in accordance with health needs and human rights principles;
- work towards the universal health coverage (UHC);
- work towards new models of development, which are respectful of the environment and not based on overconsumption, fossil fuel and infinite economic growth;
- enhance medical innovations and work towards a new model of R&D system based on effective health needs and not on corporate profit; for example, by negotiating an internationally binding biomedical R&D treaty within the framework of WHO.

The Human Rights Council should:

- enhance cooperation with WHO and other relevant organizations, in order to design health policies in accordance with HR standards;
- work in cooperation with WHO in order to ensure that the current process of the WHO reform and, more particularly, the reform of International Health Regulations (2005) has a human rights-based approach and takes into due account the effects that climate change will have on national health systems and on international peace and security.

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Human rights situations that require the Council's attention

Joint written statement* submitted by the Shimin Gaikou Centre (Citizens' Diplomatic Centre for the Rights of Indigenous Peoples), International Movement Against All Forms of Discrimination and Racism (IMADR), non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02499(E)

Please recycle

Human Rights Violations in Okinawa, Japan

In September 2015, Takeshi Onaga, the Governor of Okinawa Prefecture, made an oral statement at the 30th session of Human Rights Council, claiming its people's right to self-determination has been neglected by the Government of Japan in regard to the construction of a new U.S. military base in Oura bay, Henoko. He stepped forward to revoke the land reclamation approval for the construction of the new base granted under heavy pressure from the Government of Japan in 2013 by his predecessor, Nakaima Hirokazu.

However, the Government of Japan quickly filed complaints in an attempt to suspend and nullify Governor Onaga's revocation. It declared its intention to take the issue of Governor Onaga's revocation to court and to reinstate or "execute by proxy" the land reclamation approval. This act is clearly against the Human Rights Commitee stated in the concluding observations on the sixth periodic report of Japan in 2014. It stated "*the State party should take further steps to revise its legislation and fully guarantee the rights of Ainu, Ryukyu and Okinawa communities to their traditional land and natural resources, ensuring respect for their right to engage in free, prior and informed participation in policies that affect them*"[1].

The exisiting U.S. military bases have caused serious human rights violations in Okinawa, but the construction of the new U.S. bases is causing even more severe human rights violations, including the violation of environmental rights and freedom of expression and peaceful assembly, which are core rights to ensure the "*prior and informed participation in policies*". The Government of Japan should take measures to guarantee those rights of Ryukyuan/Okinawan people.

Environmental Rights

The rights of the Ryukyuan/Okinawan people to "a safe, clean, healthy and sustainable environment"[2] have been constantly compromised and violated as the presence of U.S. military bases in Okinawa, while affecting most aspect of the people's life, is given the highest priority of importance by the Japanese and U.S. governments for their bilateral relationship and national security.

Many national laws and measures, which address and redress environmental challenges, exist in Japan and are fairly effective in many other parts of Japan. However, in Okinawa, the implementation and enforcement of these laws and measures on U.S. military base related issues has been ad hoc at best and often impossible due to the U.S.-Japan Status of Forces Agreements (SOFA).[3] Lack of access to and transparency in environmental information is chronic. While a new accord was signed in September 2015 by both governments to supplement the SOFA in terms of environmental stewardship, its effectiveness remains to be seen.[4] In fact, these national laws and measures are occasionally manipulated to secure the continuing presence of U.S. military bases rather than a safe and healthy environment for the Ryukyuan/Okinawan people. Examples are abundant.

Noise from U.S. military aircrafts around the U.S. Futenma Air Station and Kadena Air Base constantly exceed the

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[1] International Convenant on Civil and Political Rights Human Rights Committee 'Concluding observations on the sixth periodic report of Japan' (August 20,2014) CCPR/C/JPN/CO/6 at:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fJPN%2fCO%2f6&Lang=en

[2] Resolution Human Rights and the Environment (A/HRC/25/L.31) adopted at the 25th Session of the Human Rights Council in March 2014.
http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/L.31

[3] *Nichibei chiikyotei no kaitei o motomete nichibenren karano teigen* [Demanding changes to the U.S.-Japan Status of Forces Agreements: Suggestions from the Japan Federation of Bar Associations]. 2014.
The Japan Federation of Bar Associations.
http://www.nichibenren.or.jp/library/ja/publication/booklet/data/nichibeichiikyoutei_201410.pdf

[4] Agreement Between Japan and the United States of America on Cooperation in the Field of Environmental Stewardship Relating to the Unites States Armed Forces in Japan, Supplement to the SOFA.
http://www.mofa.go.jp/mofaj/files/000117340.pdf

environmental standards set forth by the Government of Japan based upon its Basic Environment Act.[5] In some cases, noise reaches 120 dB. The Okinawa prefectural government has identified U.S. military aircraft noise as contributing factors to health problems such as hearing impediments and low birth weight in infants among the residents of Futenma and Kadena.[6] The Japanese court has ruled that noise from U.S. military aircrafts has caused health effects on residents of Futenma and Kadena and ordered the U.S. and Japanese governments to pay financial compensation. The court rulings and residents' demand for a halt to early morning flights and evening flights at the bases have not brought about changes to the military's flights.

Toxic substances, discharged from the U.S. military bases and left underground in land which have been returned to Okinawa, have contaminated land and water. They pose health threats to residents living near the bases.[7] In 2013, drums belonging to the U.S. military were unearthed in a soccer filed, a formally part of the Kadena Air Base, in Okinawa City. They contain high levels of dioxins and other toxic substances, exceeding well over the environmental standards.[8] The Government of Japan has downplayed the health risks posed by the toxic substances while withholding some information obtained from its surveys. The Government of Japan has not conducted any survey on the health risks of residents near the soccer field.

The construction of a new U.S. military base in Henoko and Oura Bay in northern Okinawa Island is considered by many to cause environment destruction to the area, one of the most biodiversity rich areas in Japan. The Government of Japan is proceeding with construction works however, because its Environmental Impact Assessment (EIA) for the airbase had concluded that the construction and operation of the airbase will have no adverse impacts on the environment. Many experts, NGOs and the Okinawa prefectural government have questioned and criticized the EIA conclusions,[9] and NGOs have demanded release of the names of the government experts who made these EIA conclusions. At present, the construction of the airbase is disputed in court between the Okinawa Prefectural government and the Government of Japan.[10] The Government of Japan stands with its EIA conclusions and is proceeding with construction works while refusing to release the names of the experts. All the while, the U.S. Government has not made itself available to the Okinawan public for any inquiry about the airbase.

The environmental rights of the Ryukyuan/Okinawan people are not respected, and real harm and damages to the environment and our health continue. Lack of access to and transparency in environmental information on U.S. military bases related issues contributes to the violation of the environmental rights of the people.

Freedom of expression and peaceful assembly

Article 21 of the Japanese Constitution guarantees the freedom of expression and assembly. However, these rights are not equally respected in Okinawa, including the right to information on environmental issues in relation to the U.S.

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[5] *Heisei 26 nendo kokuki so-on sokutei kekka* [Results of noise surveys in Japanese fiscal year 26 (2014)]. 2016.
Military Bases Affairs Division, Executive Office of the Governor, Okinawa Prefectural Government.
http://www.pref.okinawa.jp/site/kankyo/hozen/taiki/base/documents/270908kadenafutenmasokuteikekkagaiyou.pdf

[6] *Okinawa no beigun kichi* [U.S. Military Bases in Okinawa]. 2013.
Military Bases Affairs Division, Executive Office of the Governor, Okinawa Prefectural Government.
http://www.pref.okinawa.jp/kititaisaku/DP-02.pdf

[7] Ibid.

[8] *Kyu kadena hikojo (26) doboku sonota koji houkokusho gaiyo ban* [Former Kadena Air Base 26 Civil Engineering and other works: Summary version]. 2015.
Okinawa Defense Bureau and others.
http://www.mod.go.jp/rdb/okinawa/07oshirase/kanri/houkokusyo8/2houkokusyogaiyouban.pdf

[9] See for example Sakurai Kunitoshi and Gavan McCormack, "To Whom Does the Sea Belong? Question Posted by the Henoko Assessment." 2015.
The Asia Pacific Journal: Japan Focus
http://apjjf.org/2015/13/29/Sakurai-Kunitoshi/4346.html

[10] Okinawa sues Tokyo over Futenma relocation dispute, taking legal battle to next level. JapanTimes. December 25, 2015, http://www.japantimes.co.jp/news/2015/12/26/national/politics-diplomacy/okinawa-sues-tokyo-over-futenma-relocation-dispute-taking-legal-battle-to-next-level/#.VsAInoXyelh

military bases, which is often restricted in order not to escalate the opposition to the foreign bases.[11]

Media outlets in Okinawa have been particularly targeted as "*biased*" media due to their critical coverage of the issues of the construction of a new U.S. military base in Henoko, which is highlighted by the "Hyakuta incident". On 25th June 2015, over thirty five junior lawmakers of the ruling Liberal Democratic Party (LDP) held a study session at its headquarters to promote the revision of the Constitution. Naoki Hyakuta, a best-selling writer and former member of the Board of Governors of NHK (Japan Broadcasting Cooperation), was invited as a lecturer. During the session, the participants discussed how media outlets critical of the government's policies should be "*punished*".[12] Hyakuta went on to say that "(the Okinawa Times and the Ryukyu Shimpo[13]) *must be closed down by any means*", in response to a question from one lawmaker on how to "reorient the public opinion in Okinawa".[14] The study session sparked a public rebuke. Yet, on 8th February 2016, Internal Affairs and Communications Minister Sanae Takaichi mentioned possible suspension measures against broadcasters which are deemed politically biased[15], which spread a chilling effect on media freedom.

The police, including the riot police, have used violence to oppress protesters in Okinawa, including environmental human rights defenders and peace activists. The police forcefully evacuate and detain them on the sidewalk of the U.S. military Camp Schwab gate in Henoko, where they are kept inside an enclosure of iron bars and police vehicles. At sea, in addition to detention and evacuation, protesters and journalists in kayaks and small boats have been subject to violent measures by the Japan Coast Guard (JCG) such as colliding with and damaging their boats and deliberately flipping smaller boats.[16] The JCG has used excessive force, including chokeholds and holding demonstrators underwater to threaten them with drowning. The police and JCG have taken video footage of protesters and journalists, identified and threatened them by name.[17] In 2015, at least 15 individuals were arrested for allegations of violating *the Act on Special Measures Concerning Criminal Cases*[18] or "*obstructing police officers from performing their duty*".[19] Many of them are believed to be arbitrary, because of the unclear circumstances of arrests. Even some arrests involved the provocation from police officers. Those measures are used as a means to oppress and discourage people from joining demonstrations.

Citizens' Network for Biodiversity in Okinawa, an NGO without consultative status, also shares the views expressed in this statement.

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[11] IMADR and others (December 2015),'*Violation of freedoms of expression and peaceful assembly in Okinawa, Japan*', p.5, last accessed on 8 February 2016 at: http://imadr.org/wordpress/wp-content/uploads/2016/02/Joint-submission-Violation-of-freedoms-of-expression-and-peaceful-assembly-in-Okinawa_11Dec2015.pdf

[12] The Asahi Shimbun (June 26, 2015), *'Pro-Abe lawmakers offer plan to 'punish' media; Hyakuta wants Okinawa papers closed'*, last accessed on 8 February 2016 at: http://ajw.asahi.com/article/behind_news/politics/AJ201506260087

[13] The Okinawan Times and the Ryukyu Shimpo are the two main local newspapers in Okinawa.

[14] The Asahi Shimbun (June 26, 2015), *'Pro-Abe lawmakers offer plan to 'punish' media; Hyakuta wants Okinawa papers closed'*

[15] The Japan Times (February 9, 2016), *'Sanae Takaichi warns that government can shut down broadcasters it feels are biased'*, last accessed on 10 February 2016 at: http://www.japantimes.co.jp/news/2016/02/09/national/politics-diplomacy/minister-warns-that-government-can-shut-down-broadcasters-it-feels-are-biased/#.VrtCvfnhCM9

[16] Under the warrant principle, a restriction of personal liberty has to be supported by a warrant from a court judge. This measure is restricted for an emergency situation.

[17] IMADR (17 September, 2015), *'Human Rights Violations in Okinawa, Japan (HRC30, 2015, Joint-WS)*, last accessed on 8 February 2016 at: http://imadr.org/humanrights-violations-okinawa-japan-hrc30-2015-joint-ws/

[18] This act is based on the "Agreement under Article 6 of The Treaty of Mutual Cooperation and Security between Japan and the United States of America, regarding Facilities and Areas and the Status of United States Armed Forces in Japan"

[19] IMADR and others (December 2015), *'Violation of freedoms of expression and peaceful assembly in Okinawa, Japan'*, p.5

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Human Rights Council
Thirty-first session
Agenda item 2
Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Written statement* submitted by the Catholic Family and Human Rights Institute, Inc., a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02501(E)

Please recycle

The Family and Human Rights

1. C-Fam welcomes this opportunity to comment on the High Commissioner's report mandated by Resolution 29/22 of the Human Rights Council on 3 July 2015. We welcome the focus of the Human Rights Council on the family and human rights and look forward to continued engagement on this issue.

2. The family in the Universal Declaration of Human Rights and the binding treaties it has given rise to can only be understood as the union of a man and a woman in marriage and their offspring. Relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family are not entitled to the specific protection reserved for the family in international law and policy.

3. The Universal Declaration of Human Rights recognizes the family as "the natural and fundamental group unit of society" and declares that it is "entitled to protection by society and the State" (UDHR16). It recognizes the formation of a family as resulting from the union of a man and a woman who freely exercise their right to marry and found a family, and sanctions the equal rights of men and women in marriage (UDHR 16).

4. A good faith interpretation of binding international human rights instruments that further entrench these norms can only conclude that the family in international law is founded upon the union of a man and a woman in marriage. The International Covenant on Civil and Political Rights (Article 23) and the International Covenant on Economic, Social, and Cultural Rights (Article 10) reflect the UDHR verbatim. The Convention on the Elimination of all Forms of Discrimination Against Women goes further and speaks of "husband" and "wife" when referring to the equal rights of men and women in the family (Article 16).

5. The ordinary meaning of the words in these binding legal provisions excludes relations between individuals of the same sex and other social and legal arrangements that are not analogous to the family as capable of constituting a family for purposes of international law and policy. This deliberate effort of the framers of international human rights instruments to elevate the family with respect to other social and legal arrangements that are not analogous to the family becomes urgently evident in the context of the rights of the child.

6. The Preamble of the Convention on the Rights of the Child, in light of which the entire convention should be understood, also echoes the Universal Declaration of Human Rights and recognizes how the family as "the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community." The same convention includes a fundamental right of the child to know and be cared for by his/her parents which lies at the heart of concrete obligations of state parties to the treaty having to do with family reunification, adoption, cultural and religious identity, and other related provisions (see for example Articles 2, 3, 5, 7, 8, 9, 10, 18, 27).

7. International law requires the protection of children regardless of their situation in life but it does not require states to confer special benefits on relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family. The Universal Declaration of Human Rights and binding international human rights treaties recognize that many children are deprived of their family and must be provided with adequate protection (Article 25). It does not require states to equate the family to any social and legal arrangement where children may be found.

8. This norm is enshrined in binding international human rights instruments, including the International Covenant on Civil and Political Rights (Article 24), the International Covenant on Economic, Social, and Cultural Rights (Article 10), and the Convention on the Rights of the Child (Articles 2, 7, 8, 20), and can only be read to underscore further the obligation of member states to distinguish between the family as the optimal environment for children and other social and legal arrangements that are not analogous to the family.

9. By virtue of these provisions, and many others in binding international human rights instruments, the family is defined in international law; it possesses adequate international legal personality and is a proper subject of human rights.

10. To treat relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as equivalent to the family is a violation of the fundamental human right of children to know and be cared for by their mother and father, and may even jeopardize their health and wellbeing, since social science abundantly shows that children do best when they are brought up by their biological mother and father. Details about the social science on this topic can be obtained from our submission to the secretariat in preparation of their report available on the website of the Office of the High Commissioner for Human Rights.

11. Sadly, the Office of the High Commissioner for Human Rights has grossly misstated the obligations of member states under international law in this report (A/HRC/31/37) and has overlooked other fundamental human rights in both the civil and political, as well as the economic, social and cultural spheres, and particularly the rights of children, who are the most vulnerable among us and deserving of special protection. We believe the secretariat should review the report on protection of the family in light of the above considerations.

12. In the report (Paragraph 24) the secretariat asserts "There is no definition of the family under international human rights law," and that it should be understood in a "wide sense." The secretariat also equates the nuclear family with "the extended family, and other traditional and modern community-based arrangements" when it comes to caring for children and binding international obligations in this respect (Paragraph 25).

13. Moreover, the secretariat cites examples of countries extending protections reserved for the family to relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as examples of changes in family law and policy, as if it were a matter of course that international law and policy should account for such changes (Paragraph 51-75).

14. This has no basis in either international law or the international political consensus of member states. The General Assembly recently reiterated that there is a distinction in international law and policy between "the family" and other social and legal arrangements that can constitute a "household" according to different national circumstances in Target 5.4 of the Sustainable Development Goals agreed in the summit outcome document "Transforming Our World: The 2030 Agenda for Development."

15. The present report and other recent acts and declarations by the UN secretariat, agencies, treaty bodies, and other UN mandate holders, treating relations between individuals of the same sex and other social and legal arrangements between adults that are not analogous to the family as equivalent to the family are ultra vires and cannot give rise to binding legal obligations on sovereign states. They are not based on valid interpretations of international law and policy, and cannot contribute to the formation of new customary international law.

16. United Nations resolutions should continue to reflect the definition of the family in existing international law, as Resolution 29/22 has done, and may never use language that implicitly or explicitly attempts to modify this definition. Any mention of the family in UN resolutions can only be interpreted in reference to a man and a woman united in marriage and their natural offspring. Any attempt to modify the definition of the family in international law and policy is incompatible with the fundamental human rights enshrined in the Universal Declaration of Human Rights and human rights treaties, and constitutes a violation of those rights.

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Human rights situations that require the Council's attention

Written statement* submitted by the World Muslim Congress, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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Please recycle

Human Rights Situation of Indian Occupied Kashmir

In Indian Occupied Jammu and Kashmir since last 25 years the government of India has unleashed a war against the people by deploying 700,000 armed forces, equipped with draconian laws and brutal policies to counter the popular uprising against the Indian occupation of Jammu and Kashmir.

In last 25 years around 100,000 people have been killed and approximately 8000 to 10,000 people have been subjected to enforced disappearances. There are thousands of cases of sexualized and gendered violence. Torture is used as a State policy to collectively punish the people of Kashmir for demanding right of self-determination.

There have been very well documented reports of local and international human rights organizations like Amnesty International and Human Rights Watch which prove that Indian State has institutionally been involved in promoting human rights abuses as a means to control the demand for self-determination. There are more than 7000 unmarked graves and mass graves across several districts of Indian Occupied Jammu and Kashmir. The human rights documentation also suggest that government has incentivized the extra-judicial executions by keeping the reward money for killing the people, rather than arresting the people and producing them in courts.

So far not even a single perpetrator belonging to Indian armed forces has been punished. Recently a report "Structures of Violence: The Indian State in Jammu and Kashmir", was submitted to various UN Special Procedures. The report elucidates while using government documents acquired through the Right to Information Act in India and Jammu and Kashmir, how despite evidence against the Indian armed forces involved in various crimes against the people of Indian Occupied Jammu and Kashmir, not even a single perpetrator has been so far prosecuted by the Indian judicial mechanisms. (Here is the link of the report: www.jkccs.net/structures-of-violence-the-indian-state-in-jammu-and-kashmir-2/)

Recently the Inspector General of the Jammu and Kashmir Police, Javaid Mujtaba Geelani informed the local media in Kashmir, that they have increased the monetary rewards for the armed forces for killing the militants from the maximum of 15000 USD to 19,000 USD. (see the link: http://kashmirreader.com/2016/02/police-took-the-decision-to-hike-reward-money-for-killing-militants-igp/)

Earlier the human rights groups have urged India to revoke this policy of giving the monetary reward for killing the innocent civilian and branding them militants, as it has led to killings and disappearances of several civilians who are claimed falsely as militants and killed for seeking the monetary rewards. Prior to this admission by the very high police official the government functionaries have refused to publicly accept the existence of such policy, but in the courts on several cases of fake encounter killings it was brought to fore that some of the armed forces personnel were involved in killing civilians and falsely claimed them as militants for the sake of monetary rewards. The human rights groups in Indian Occupied Jammu and Kashmir asked through Right to Information Act applications the Indian armed forces and the Jammu and Kashmir police to furnish details about this policy of monetary rewards for killing militants but the authorities in India have always refused to divulge any information on this matter, claiming that it will threaten the security of the State and integrity of the country.

There are hundreds of cases documented by human rights groups in which civilians have been killed in fake encounters and also in many cases the State Human Rights Commission of Jammu and Kashmir, through its investigations has established that armed forces have been involved in carrying out fake encounters for monetary rewards, awards and out of turn promotions.

Now that the admission of this brutal State policy of incentivizing the extra-judicial execution has come from none other than the Indian State representatives, and that Indian State instead of revoking this atrocious policy has chosen to further increase the amount for this policy of extra-judicial killings, we urge the United Nations Human Rights Council(UNHRC) to forthwith call on the Indian State to stop this policy of incentivizing the extra-judicial killings.

India has so far not allowed prosecution of any armed forces personnel and that it is institutionally involved in carrying out violence and then subsequently by providing impunity to the armed forces personnel, India has made justice

impossible for victims in Jammu and Kashmir. There is no scope to demand justice from the local judicial mechanisms; therefore the UNHRC must initiate an international probe on the human rights abuses in Jammu and Kashmir on the pattern of Sri Lanka. If it can be done in Sri Lanka, why not in Jammu and Kashmir? India is victimizing and discriminating the people of Indian Occupied Jammu and Kashmir from getting the benefits of judicial processes of India, therefore we urge UNHRC to reach out to the people of Indian Occupied Jammu and Kashmir by announcing a UN led investigation in the crimes perpetrated by the Indian State in Jammu and Kashmir

United Nations A/HRC/31/NGO/100

General Assembly

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Human Rights Council
Thirty-first session
Agenda item 7
Human rights situation in Palestine and other occupied Arab territories

Written statement* submitted by Al-Haq, Law in the Service of Man, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.16-02503(E)

Please recycle

Challenging unlawful Israeli policies in the General Debate of Agenda Item 7 of the Human Rights Council: Acting to end systematic and gross violations of international law

Standing Agenda Item 7 of the Human Rights Council (HRC) provides a vital platform for addressing the proliferation of international law violations committed in the occupied Palestinian and Syrian territories. The Agenda Item also provides an important precedent of how the HRC could operationalise its mandate in other situations where prolonged, gross and systematic violations of human rights are not being addressed adequately. At a time when Israel, the Occupying Power, is adopting policies that result *inter alia* in collective punishment and wilful killing, it is imperative that States call for concrete measures through conducive and full participation under Item 7. The EU indirectly acknowledged in a 2014 confidential non-paper that a change in its own strategy of non-participation under Item 7 could bring Israel in line with its obligations under international law.[1]

Of particular concern in the last few months are Israel's "shoot-to-kill" policy and their policy of collective punishment. Discussed in more depth below, these acts must be addressed in the General Debate of Agenda Item 7 of the upcoming HRC session and with them a need for accountability for Israeli officials responsible for ongoing systematic and grave violations in occupied Palestine.

Collective punishment in Jerusalem, Qabatiya, and the Gaza Strip

Since Israel's illegal annexation of East Jerusalem following its occupation in 1967, Israel has implemented a comprehensive policy to deepen its control over the city. As part of this policy, the Israeli Occupying Power has planned for and implemented practices towards the fragmentation of East Jerusalem, involving serious violations of Palestinian rights. Today, East Jerusalem is not only isolated from the rest of the West Bank, but Palestinian neighbourhoods therein are cut off from each other by checkpoints, the Annexation Wall, settlements and other barriers. Further, Israel regularly seals off these areas as a form of collective punishment. Limitations on movement and access extend to arbitrary restrictions on Palestinian access to Muslim and Christian holy sites. While recent attacks on Al-Aqsa Mosque Compound are considered as a spark for the current unrest, they are a routine part of Israeli occupation.

Other Israeli practices in the city include removing the Palestinian population from East Jerusalem, either through actively revoking residency and property rights, or by creating conditions that force Palestinians to leave East Jerusalem, including through the suppression of Palestinian political, economic, social, and cultural life. At the same time, Israel endeavours to increase and fortify Jewish presence in East Jerusalem through the expansion of illegal settlements. As violence intensified over the past few months, Israel took escalated actions that are symptomatic of its historic policy towards East Jerusalem and its Palestinian residents. Such a policy impacts the Palestinian community as a whole in East Jerusalem, including the obstruction of movement in and access to Palestinian neighbourhoods, punitive home demolitions, the revocation of residency, and economic measures.[2]

In other parts of the West Bank, Israel regularly enacts similar unlawful policies. For example, on 4 February 2016, Israeli forces sealed off the city of Qabatiya, south Jenin, for three days after three young men, all from Qabatiya, carried out an attack against Israeli forces near Damascus Gate in Jerusalem a day earlier. The Palestinian men, Ahmad Zakarneh, 20, Muhammad Kamil, 21, and Ahmad Abu Al-Rub, 20, were immediately shot and killed. For three days following the attack, 30,500 Palestinian residents of Qabatiya were cut off from the rest of the OPT.

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[1] See: Al-Haq, *Strengthening the European Union's involvement at the United Nations Human Rights Council: Standing Agenda Item 7*, available at: http://www.alhaq.org/publications/Strengthening.the.EU.Involvement.pdf (2 February 2016); see also Ravid, *EU Seeks Talks with Israel over Red Lines*, Haaretz, available at: http://www.haaretz.com/israel-news/1.622099 (22 October 2014)

[2] See Al-Haq, *East Jerusalem: Exploiting Instability to Deepen the Occupation*, available at: http://www.alhaq.org/publications/Special.Focus.on.jerusalem.pdf (3 December 2015).

In the Gaza Strip, Israel has imposed an eight-year-long closure on the Gaza Strip, which includes severe restrictions on the freedom of movement of Palestinians and the free flow of goods. In general, the closure has had all-encompassing effects on Palestinians' access to employment, livelihood, education and health in the Gaza Strip.[3] According to the International Committee of the Red Cross (ICRC), the closure imposed on the Gaza Strop is "choking off any real possibility of economic development".[4] Moreover, because the "whole of Gaza's civilian population is being punished for acts for which they bear no responsibility", the ICRC considers that the closure amounts to collective punishment.[5] In past Israeli offensives on the Gaza Strip, targeting of civilian infrastructure to inflict hardship on the civilian population, an act amounting to collective penalty and also amounts to a war crime,[6] was also prevalent.[7]

Collective punishments violate both international humanitarian law and human rights law, as both emphasize the individual nature of punishment. Article 33(1) of the Fourth Geneva Convention affirms, "No protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited." Article 75(2)(d) of the First Additional Protocol to the Geneva Conventions, reflective of customary law, confirms that collective punishments are prohibited at any time.[8] Under international human rights law, collective punishment contradicts principles of due process guarantees and rights to fair trial. The Human Rights Committee has affirmed that even in states of emergency, States parties may not act "in violation of humanitarian law or peremptory norms of international law, for instance [...] by imposing collective punishments [...]."[9]

Shoot-to-kill policy: Excessive use of force and extrajudicial executions

From 1 October 2015, Israeli police, military personnel, security guards and armed settlers have killed more than 154 Palestinians. These killings took place in the context of demonstrations, alleged attacks and other circumstances following altered Israeli policies to facilitate and encourage extrajudicial, summary and arbitrary killings. In September 2015, the Israeli Cabinet unanimously approved Prime Minister Benjamin Netanyahu's proposal to lower the threshold for use of live ammunition, to a standard that violates international law. This was a part of the Prime Minister's "war against stone-throwing in Jerusalem."[10] Previously, Israeli police were allowed to use live ammunition only when facing a life-threatening situation. Now, Israeli police have permission to fire on individuals whenever there is an "immediate and concrete danger to police or civilians."[11] The Cabinet also approved the use of "ruger sniper rifles," which can cause serious bodily harm and death - these rifles were used by *untrained* snipers against Palestinians protesting in East Jerusalem.[12] Only after their use did the police decide to employ a training programme for use of these rifles by snipers, a clear indication that the police intend to continue to use these rifles against protesters in the future.[13]

Another concerning trend, which may also be attributed to the change in open-fire regulation, is Israeli forces' killing Palestinians in the context of alleged attacks, when the suspect could have been controlled without resorting to the use

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[3] See OCHA oPT, 'Gaza Initial Rapid Assessment' (27 August 2014), page 6, available at: http://www.ochaopt.org/documents/gaza_mira_report_9september.pdf (last accessed 12 February 2016)

[4] See ICRC, 'Gaza Closure: Not Another Year!' (14 June 2010), available at: https://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm (last accessed 12 February 2016); ICRC, 'Practice relating to Rule 103, Collective Punishments', available at: https://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule103 (last accessed 13 February)

[5] *Ibid.*

[6] ICRC Customary IHL, rule 103.

[7] See: Al-Haq, *Divide and Conquer: A Legal Analysis of Israel's 2014 offensive against the Gaza Strip*, available at: http://www.alhaq.org/advocacy/topics/gaza/898-divide-and-conquer (22 February 2015).

[8] 1977 PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949(PROTOCOL I), 1125 U.N.T.S. 3, *available at* https://www.icrc.org/ihl/WebART/470-750096.

[9] Human Rights Committee, *GC 29*, U.N. Doc CCPR/C/21/Rev.1/Add.11, para. 11 (2001).

[10] Israeli Ministry of Foreign Affairs, available at: *http://mfa.gov.il/MFA/PressRoom/2015/Pages/Security-Cabinet-statement-24-Sep-2015.aspx*

[11] *Ibid.*

[12] *See*, J Khoury, *Israel Police Suspend Sniper Use After East Jerusalem Riots*, Haaretz (22 September 2015), available at:http://www.haaretz.com/israel-news/.premium-1.677095.

[13] *Ibid.*

of live fire. Since the beginning of October, over 76 Palestinians were shot by force of the Israeli Occupying Power during or after alleged attacks.[14] In many of these killings, ample video footage and imagery has emerged casting doubt upon whether Palestinians killed had attempted to commit attacks, and calls into question the actions of the Israeli forces. In fact, footage as well as eyewitness accounts in several cases confirmed that Israeli forces used lethal force against Palestinians who did not pose a threat or no longer posed a threat. In some cases, eyewitnesses confirmed that Israeli forces used lethal force against unarmed Palestinians upon suspicion without them posing any form of direct threat or harm.

The recurrence of these incidents suggests an unofficial shoot-to-kill policy whereby Israeli forces are resorting to excessive and lethal force in an unlawful manner. Lethal force is being used against Palestinians allegedly involved in attacks as the first, and only, course of action and not as a last resort. International law, as well as Israeli law, permits using lethal force after all measures have been exhausted and where a suspect poses immediate and serious danger. In many of the cases since October 2015, Israeli forces appear to have resorted to using lethal force as an alternative to attempting to apprehend suspects and even without issuing warnings. Even in cases where suspects were holding a knife or attempting a stabbing attack, international law allows for the use of force to wound following warnings so as to apprehend the suspect and not use lethal force to kill.[15]

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[14] According to Al-Haq statistics: http://www.alhaq.org/documentation/field-updates-2015/971-palestinians-killed-in-the-opt-since-1-october-2015

[15] For more on Israel's extrajudicial executions, please feel free to contact *mona@alhaq.org*

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Human Rights Council
Thirty-first session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Written statement* submitted by the Jubilee Campaign, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Please recycle

Detention of Nguyen Van Dai and Freedom of Religion or Belief in Vietnam

Jubilee Campaign, together with Christian Solidarity Worldwide (CSW), seeks to draw the Council's attention to the detention of lawyer and activist Nguyen Van Dai and his colleague Le Thu Ha and as well as wider freedom of religion or belief violations in Vietnam.

Detention of Nguyen Van Dai

On 16 December 2015 Vietnamese human rights lawyer Nguyen Van Dai and his colleague Le Thu Ha were taken into police custody in Hanoi, and later charged with 'conducting propaganda against the Socialist Republic of Vietnam' under Article 88 of the Vietnamese penal code. This charge is commonly levelled against activists and dissidents in Vietnam, and can carry a sentence of up to 20 years in prison. Dai, a well-known defender of human rights and religious freedom, has previously served a four-year prison sentence after being found guilty under the same article. After being released he was harassed and physically intimidated, and on more than one occasion he was assaulted. At the time of his December 2015 arrest, Dai was preparing to meet European Union representatives who were in Hanoi for the annual EU-Vietnam human rights dialogue.

Nguyen Van Dai (46) is a Hanoi-based Vietnamese human rights lawyer and pro-democracy activist, who has provided legal advice and representation to victims of human rights abuses – including religious minorities – across Vietnam. Other human rights-related activities include organising training courses and conferences for young activists and for religious communities facing restrictions on their right to freedom of religion or belief, contributing to online articles and reports on human rights issues, and networking with other activists to promote human rights and democracy. Dai is a Protestant Christian. On at least one occasion, he has been prevented from attending church; these preventions were in connection with his human rights work and his status as a former prisoner. Dai is also the founder of the Committee for Human Rights in Vietnam, and one of the original signatories to Bloc 8406, a manifesto on freedom and democracy in Vietnam signed by 118 peaceful democracy activists in 2006.

On 6 December 2015 Dai was assaulted along with three of his friends after attending a conference organised to educate the citizens of Nghe An about their rights, including the right to freedom of religion or belief, as guaranteed in the Vietnamese constitution. The event proceeded without interruption, despite initial requests by the police to cancel the forum. Afterwards, Dai and several colleagues travelled to Quan Hanh, the capital of Nghi Loc District. Upon arrival they were met by approximately 20 plain-clothed police, who proceeded to confront them and beat them with wooden sticks, striking their shoulders and thighs. Dai was pulled onto a motorcycle and driven to a different location about 20km from Nghi Loc, where the beatings continued and he received a blow to the head. His possessions were confiscated, including documents, his phone, camera and wallet.

On 16 December 2015 Nguyen Van Dai and his colleague Le Thu Ha (33) were taken into police custody in Hanoi, and were later charged with 'conducting propaganda against the Socialist Republic of Vietnam' under Article 88 of the penal code. During the arrest Dai's home was searched by approximately 20 police officers and several items were confiscated, including laptops and bank documents.

Dai's detention has been confirmed in a statement by the Ministry of Public Security which accuses him of 'conducting propaganda against the state' (Article 88). Both Nguyen Van Dai and Le Thu Ha are being held in B14 prison in Hanoi, fellow activists' requests for visits have been refused, and there are concerns that they are at risk of torture and other ill-treatment. According to unconfirmed reports, Dai's wife has been able to visit him once, but they were interrupted throughout the visit. Various activists have used social media to call for their release.

The arrest of Le Thu Ha, Dai's assistant, is believed to be connected to Dai's case, since she was arrested at her office on the same day and faces the same charge. Ms Ha is a member of the Brotherhood for Democracy Association and has been involved in providing English classes for human rights activists. According to one source, she was briefly detained by police at Hanoi airport when trying to leave for a human rights meeting in Sweden. Her passport was confiscated on the grounds of 'national security'. She was also interrogated for one day in September 2015, along with five other

activists, for her work with the new YouTube channel 'Conscience TV' – an independent news service with a special focus on social justice and human rights.

Jubilee Campaign together with CSW is deeply concerned about the safety and human rights of Nguyen Van Dai and Le Thu Ha, and calls for their immediate release and for them to be allowed to carry out their vital work without interference or threats to their personal safety.

Draft Law on Religion or Belief

The Vietnamese constitution of 1992 guarantees freedom of religion or belief; however, in reality the situation has remained fragile. Conditions for believers vary according to region, ethnicity, legal status, denomination and relationship with the authorities. Jubilee Campaign together with CSW is concerned about the draft law on religion or belief currently being reviewed by the legislature in Vietnam.

At present, there is no law on religion or belief in Vietnam. However, the Ordinance on Belief and Religion (2004) and Decree 92 (2013), which provides guidance on the implementation of the Ordinance, have been criticised by lawyers, religious leaders and human rights activists for focusing on the management and control of religious activities rather the protection of the right to freedom of religion or belief. There are fears that the new law on religion and belief will prevent rather than protect the enjoyment of full freedom of religion or belief. Civil society organisations have raised concerns about various elements of the draft such as the onerous requirements for the registration of religious organisations, excessive state control over and interference in religious organisations' internal affairs, and ambiguous language that may lead to discrimination. Despite the consultation of the President of Vietnam Fatherland Front (VFF) with 32 religious organisations in 2015, the drafting of the new law was not inclusive of diverse religious voices. It is not clear whether independent religious communities not registered with the authorities were consulted. In addition, religious leaders were given a prohibitively short time to provide feedback on the draft law.

Religious leaders and legal experts fear that if passed, the draft law would act as a powerful instrument to allow the repression of religious activities and communities to continue. It remains crucial for the government to either revise the draft law or abandon it altogether, in line with international standards on the right to freedom of religion or belief.

Recommendations to the Human Rights Council

- Urge Vietnam to unconditionally and immediately release all prisoners of conscience arrested or arbitrarily detained in connection with their peaceful defence of freedom of religion or belief and other human rights
- Ensure that the cases of Nguyen Van Dai and Le Thu Ha are handled in accordance with international law, and that their rights are protected as stipulated in the International Convention on Civil and Political Rights, and other treaties to which Vietnam is a party. This includes the right to legal assistance, the right to be presumed innocent until proven guilty, and the right to a fair and public hearing, as well as protection from torture and mistreatment
- Urge Vietnam to revise the draft law on religion or belief in open and free consultation with representatives of religion or belief communities, including ethnic and religious minorities and unregistered/independent communities, or abandon it altogether; and to repeal other laws and decrees which infringe on fundamental human rights
- Urge Vietnam to invite the UN Special Rapporteur for freedom of religion or belief and other UN Special Procedures to visit the country with unhindered access
- Urge Vietnam to abide by all the international human rights instruments it has ratified
- Ensure that human rights are central in any negotiations, whether bilateral or multilateral, between Vietnam and any UN Member State.

Christian Solidarity Worldwide, an NGO without consultative status, also shares the views expressed in this statement.